

Fin. Doc. No.	Decided Date	Title of Case	Citation	Labor Protest	Labor Conditions	Reasons Assigned for Absence of Conditions or for Reservation of Jurisdiction
9918	7-4-44	Missouri Pac. R. Co. Reorganization.	257 ICC 479, 562- 563	RLEA	Fair and equitable arrangement ²	It will be necessary for debtor to apply to us before consummating the plan. Employees unaffected.
14501	9-30-44	Seaboard Ry. Co. Acquisition.	584, 591	No	None	<i>Ibid.</i>
14367	10-13-44	Wheeling & L.E. Ry. Co. Control.	713, 716	No	None	<i>Ibid.</i>
14706	12-30-44	Columbia & Millstadt R. Co. Purchase.	729, 733	Labor Org.	Juris. Reserved	Employees may lose overtime pay; reserva- tion of juris. requested by employees. Employees unaffected.
14642	10-21-44	Milwaukee Livestock Handling Co. Con- trol.	796, 800	No	None	<i>Ibid.</i>
14802	4-17-45	Fox Purchase	261 ICC 95, 99	No	None	<i>Ibid.</i>
14692	6-5-45	Chesapeake & O. Ry. Co. Purchase.	239, 260	No ³	None	<i>Ibid.</i>
14931	9-19-45	Gulf, M. & O. R. Co. Purchase, Securities.	405, 434	RLEA	Washington	Conditions stipulated;
14891	11-28-45	Baltimore & O. R. Co. Operation.	535, 544- 545	No	None	Employees of the car- rier-parties will be benefited; employees of another carrier in dis- continued joint traffic arrangement with appli- cant are unaffected by the transaction before the Commission. Employees unaffected.
6790	12-18-45	Nicholas, Fayette & Greenbrier R. Co. Lease.	546, 547	No	None	
14677	1-3-46	Chicago, B. & Q. R. Co. Abandonment.	549	No	4-year com- pensation	

² RLEA requested inclusion of certain provisions to protect employees or, as the Commission stated, that it "define the procedural requirements which otherwise must be followed by the representatives of the employees in obtaining such protection" (257 ICC at 562). The Commission in effect imposed "North Western" conditions, as it expressly did later. See 275 ICC at 141-42 and 256, discussed at p. 169, *infra*.

³ Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Engineers intervened in support of the application.

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FILED

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No. 681

JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES,
ET AL., *Appellants*

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*

Appeal from the United States District Court for the
Eastern District of Michigan

REPLY BRIEF FOR APPELLANTS

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STATEMENT

The appellants believe it necessary to file a reply brief in this case despite the short time available because the appellees¹ have abandoned many of the argu-

¹ The United States of America and the Interstate Commerce Commission will be referred to hereinafter jointly as the "Government" and the appellee Erie-Lackawanna Railroad will be referred to as the "Erie-Lackawanna" or the "railroad".

ments used below and have designed new arguments in an attempt to sustain their position. The filing of this brief is also necessary to afford a clear understanding of the position of appellants in this case regarding the *type* of protection which they are convinced is provided by the second sentence of Section 5(2)(f):

Appellants would burden this Court unnecessarily if it set out in this brief a refutation of each and every fallacy inherent in the newly constructed arguments of the appellees. Many of the fallacies are quite apparent and, in any event, time does not permit the luxury of such an undertaking. Within the pages of this brief appellants will mention a comparative few of the many fallacies present in the briefs filed by the appellees.

Appellants ask the Courts indulgence for the manner in which this brief is written. Due to the time limitations involved, it was necessary to dictate the brief and have it printed without benefit of page or galley proofs.

At the outset appellants will state again their position as to the *type* of protection afforded by Section 5(2)(f). Then the various divisions of argument utilized by all parties will be covered, such as the plain meaning of the language of Section 5(2)(f), its legislative history, and so forth.

I

Appellants Do Not Contend That Section 5(2)(f) Requires a "Job Freeze" as That Term Is Defined in Appellees' Briefs

The term "job freeze" is repeated on almost every page of each of the briefs filed in this proceeding by the appellees. They insist that appellants take

the position that the second sentence of Section 5(2)(f) accords to railroad employees a strict, absolute, inflexible "job freeze". (G. 17, 19; EL. 2, 5, 14, 21.)²

Of course, the task of appellees is made immeasurably easier if they base their arguments upon the erroneous conclusion that appellants' view of the statute would prevent any adverse effect whatever from occurring to employees. From the starting point of "job freeze", many arguments can be concocted to show that such an interpretation is not supportable. For example, a claim of "job freeze" may not be supported by the plain language of the statute since that language might be interpreted as general and not specific (EL. 18); or because the language is not self-operating and some type of discretion is left to the Commission (EL. 21, 23). Such a major premise is handy when attempting to explain away the effect of the modified language in the Harrington Amendment and the unequivocal statements of Mr. Harrington himself and all those who spoke in support of that modified language (G. 35-36, 39).

The Government sets forth the "essence" of appellants' position, as follows (G. 19):

"The essence of appellants' position is that no employee of a consolidated railroad system should be *adversely affected* in any respect for a period of four years (or such lesser time as the employee had been employed by one of the merging railroads) from the effective date of the Commission's order." (Emphasis supplied)

² The letter "G" refers to the joint brief filed by the Government, the letters "EL" refer to the brief of the appellee railroad and the letter "A" refers to the brief for appellants.

And again (G. 17):

"* * * [appellants] claim that the general language in which the second sentence of the section is couched has a single specific and inflexible meaning: that an absolute job freeze must be imposed in every case in which the Commission approves a merger."

Since virtually all of appellees' arguments are constructed upon a foundation of misunderstanding, appellants believe it to be of paramount importance that their position as to the *type* of protection required by Section 5(2)(f) again be stated.

Appellants recognize that reasonable men may differ as to the detailed benefits which must be accorded employees beyond the mere retention of them in the active service of their employer. While appellants maintain that all employees must be retained in the active service of their railroad employers, they have never contended that "no worse position" meant an "absolute job freeze". Nor have appellants ever claimed that employees would not be "adversely affected in any respect" under the requirements of Section 5(2)(f), as they view them. Appellants believe that a man whose job is transferred is adversely affected but that may not be determined as placing him in a "worse position with respect to his employment." Employees who are required to take other jobs which do not pay quite as well are adversely affected even though such displaced employees may have the difference in wages made up by a displacement allowance. These adverse effects to employees, we believe, would occur should appellants' position be sustained.

Jobs may be transferred; employees may be required to take other, lower paying jobs. In short, as appel-

lants view Section 5(2)(f), the basic requirement contained in that statute is that each employee be continued in his employment in at least a comparable job at a comparable wage (any difference in wages to be made up by what is referred to in the railroad industry as a displacement allowance).

There is great flexibility here with which the Commission can work and appellants believe that it was to give the Commission some flexibility of action while retaining the employment protection concept unchanged that the language of the Harrington Amendment was modified.³

II

The Meaning of the Plain Language of Section 5(2)(f)

The appellees have put forth an entirely new argument in support of their contention that "worse position with respect to employment" requires protection only in the form of financial compensation.

The argument is quite ingenious and is strongly relied upon by both appellees. The Erie-Lackawanna sets forth this new argument as follows (EL. 10):

"Appellants' construction ignores the fact that the statute deals with 'affected' employees, which this Court has read in its ordinary sense of 'adversely affected'. *Railway Labor Executives' Association v. United States*, 339 U.S. 142, 155. Under appellants' job freeze thesis, there would be no 'adversely affected' employees during the protective period of the second sentence of § 5(2)(f)."

³ For example, the original language of the Harrington Amendment prohibited *displacement* of employees to other and lower paying jobs, while the modified language of the Harrington Amendment permits such displacement.

The Government presents the argument in this manner (G. 11-12):

"In our view, the second sentence, with its provisions for the protection of 'affected' employees, requires that those who are economically injured in consequence of a Section 5 transaction receive a full measure of compensatory benefits for the statutory period. This means, in addition to compensation for lost wages, compensation for the other incidents of employment, such as costs of transfer, hospitalization, free transportation, and the like.

* * *

"Moreover, if all employees must be maintained in their existing employment following approval of a merger, it is difficult to understand the reference to employees 'affected' by the merger."

This argument would be reasonable *if* the statute was worded as appellees claim but, in fact, *it is not*.

The first sentence of Section 5(2)(f) clearly contemplates that employees will be adversely affected before the "fair and equitable arrangement" will be applied to them. That sentence is designed to protect the "interests of the railroad employees affected."

But the second sentence does not contemplate an employee being placed "in a worse position with respect to his employment" before *its* protection is applied to him. The authors of that provision made a significant change in referring to employees in the first and second sentences—while the first sentence refers to "employees affected" the second sentence refers to "employees of carriers affected". In other words, under the second sentence it was contemplated that no employee would be affected within the meaning of the Act and that

all employees of *carriers* affected must be kept "in no worse position with respect to their employment." Congress clearly intended no harm (with respect to employment) to be visited upon the employees of carriers affected by its orders.

This significant difference in treatment between the first and second sentences of 5(2)(f) with regard to the term "affected" strongly indicates that in the first sentence the use of the term "railroad employees affected" intended compensation protection and in the second sentence the use of the term "employees of carriers affected" intended employment protection.

At page 16 of its brief, the Government sets forth its belief "as to the *kind* of protection which is required" by Section 5(2)(f):

"* * * we believe that it imposes upon the Commission the duty to assure the employee entirely adequate compensation for the various incidents of employment which may be lost or impaired as a result of the merger."

The Government apparently believes that Section 5(2)(f) protects an employee in every element of his employment except active employment itself. (Cf. Government brief, page 11.)

"These 'various incidents' are referred to as those 'different types of benefits provided for in the Washington Job Protection Agreement of 1936' as well as the 'New Orleans' conditions (G. 16, n. 7). Such a view ignores the fact that the very purpose of Harrington and his colleagues was to give protection of a kind unlike that provided by the Washington Agreement."

III

Legislative History

As appellants emphasized in their brief (A. 50) the question of whether the language of the Harrington Amendment as it appeared in the Wadsworth motion to recommit was intended to have the same effect as the original language of the Harrington Amendment is the crucial question to be resolved in interpreting Section 5(2)(f). Appellants again emphasize that the term "worse position with respect to employment" as it appeared in the Wadsworth motion to recommit *was not changed* by the conferees in the Second Report. It was limited only with respect to the length of time it would be effective.

To whom do we go to find the meaning of the term used in the Wadsworth motion and in the present law? We go to the sponsors as this Court has often held should be done.⁵ The sponsors of the legislation who spoke were Mr. Harrington, Mr. Warren and Mr. Thomas. Each of these gentlemen spoke clearly and unequivocally to the effect that the term "no worse position with respect to employment" had precisely the same effect as the original language of the Harrington Amendment and that it was for *that* reason that they were supporting it and that, in their opinion, every member of the House should support it, particularly those 275 members of the House who had signed the petition requesting the conferees during the first conference to retain the Harrington Amendment in the bill. (A. 50-52, 54-56)

⁵ *Mastco Plastics Corp. et al. v. N.L.R.B.*, 350 U.S. 270, 288n, 76 S. Ct. 349, 100 L. Ed. 309; *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-395, 71 S. Ct. 745, 95 L. Ed. 1935; see also *S. H. Camp & Co. v. N.L.R.B.*, (6th Cir.) 160 F. 2d 519, 521 and cases cited therein.

Appellees have now recognized that in order to prevail they must demonstrate that the modified language was intended to have an entirely different substantive effect from the original language and this they know, they cannot do unless in some way they can destroy the effect of the words of Mr. Harrington, Mr. Warren and Mr. Thomas.

The Erie-Lackawanna is driven to the astounding contention that the words of these gentlemen should not "be taken at face value" as they "may have been designed for the record, to satisfy constituents in that election year." (EL. 30n.) The Government makes no such patently incredible contention. By the subtle use of inverted argument the Government attempts to picture Mr. Harrington as a man who had lost but who supported the motion to recommit because it was better than nothing at all. The Government's major premise is that the "job-freeze proposal" had been killed (apparently by the mere change in language effected in the Wadsworth motion to recommit.)⁶ On the basis of this assumption, the Government correctly quotes Mr. Harrington as stating that the language used in the motion to recommit was "designed to accomplish the purposes intended to be accomplished by the Harrington Amendment"; "with this provision, these younger men will be spared that fate, and job eliminations will come gradually from the other end of the seniority list, as deaths, resignations and retirements occur"; and, "natural attrition will shortly have

⁶ The use of the term "job freeze proposal" here injects confusion into the argument. The question before the Court is not whether the modified language perpetuated the "strict job freeze" contained in the original language but whether it preserved employment protection, as distinguished from mere compensation protection, to all employees of carriers affected.

absorbed the employees that otherwise would be eliminated." (G. 35-56.)

There then follows this enigmatic sentence (G. 36):

"Although this statement undoubtedly claims that, under the substitute proposal, jobs would not be eliminated, it is notable that Congressman Harrington made no attempt to explain the difference in language between the two amendments, perhaps because he believed that compensatory protection unlimited as to time would, from the employee's standpoint, be as good as a job freeze."

This sentence admits, as it must, that in Harrington's view no jobs would be eliminated under the modified language but then rejects the statement because Harrington does not inform us why the words were changed. It is assumed gratuitously that he does not do so because unlimited compensatory protection would be as good as a "job freeze".

Despite the ingenuity of the peculiar logic employed by the Government, it does not obliterate reality. Harrington, Warren and Thomas said the modified language as contained in the Wadsworth motion meant the same thing as the original language.

The Government claims that "it was hardly in the interest of the proponents of the original Harrington Amendment to deprecate the substitute" (G. 35) but Harrington was not the moral coward which that statement and the incredible statement of the Erie-Lackawanna noted above would indicate. Harrington informed the House conferees that he was for the Wadsworth motion but that if they removed railroad abandonments from its purview he would vote against the Conference Report. The Conference Report re-

moved railroad abandonments from the coverage of the Act and Harrington had the moral courage to keep his word. 86 Cong. Rec. 10187, 10192.

To whom would the appellees have the Court resort in its efforts to determine the true intent and meaning of the term "worse position with respect to employment" in the second sentence of Section 5(2)(f)? Appellees expressly state that they would have the Court rely solely upon the fears and vague objections of the three most outspoken opponents of the Harrington Amendment in both its original and in its modified form. (G. 36-37, 39-40; EL. 11-12, 30, 32, 35-36.) That Mr. Lea had "fears and doubts" cannot be denied but, as this Court has said, "the fears and doubts of the opposition are no authoritative guide to the construction of legislation."

Mr. Lea twice stated his fear as to the effect of the modified language (A. 52-54) and Mr. Harrington, in explicit terms, told Mr. Lea that his conception of the language was wrong and that his fears were baseless. (A. 52-56.) Mr. Wolverton's objection was never clearly stated (A. 56) and Mr. Halleck was perhaps the only member of the House who thought the *original* language of the Harrington Amendment provided no more than compensation protection. (A. 79.)

The Second Conference Report is referred to by appellees as a compromise between the two opposing factions in the House. (G. 22, 42.) The opposing factions in the House comprised, on the one hand, of those who thought compensation protection was sufficient and; on the other hand, of those who thought

⁷ *Mastro Plastics Corp. et al. v. N.L.R.B.* and cases cited *supra*, p. 8.

such protection was not sufficient and who sought employment protection. This is confirmed in the brief of the Government (G. 27). Appellees, however, would have the Court believe that the "compromise" which resulted was one in which the proponents of employment protection gave all and received nothing. As a matter of fact, the proponents of employment protection gave up a "strict job freeze" and accepted a more flexible type of employment protection limited in duration to four years. In view of this, Section 5(2)(f) as it now stands reflects a true compromise between the opposing factions in the House, but the "compromise" suggested by the Government does not even meet the definition of the term. In the Government's view the employment protection proponents "compromised" by abject surrender.

There are many additional subtle arguments advanced by the appellees in their briefs regarding the legislative history of this provision. Time simply does not permit a review of these arguments. However, appellants are quite ready and willing to submit a memorandum covering all such arguments at a later date should the Court so desire.⁸

IV

The Decisions of This Court

The appellees attempt to dismiss the applicability of this Court's interpretation of Section 5(2)(f) in *Railway Labor Executives' Association v. United States*,

⁸ The press of time required by the receipt of the printed briefs of Erie-Lackawanna and the Government on Thursday and Friday, March 23 and 24 respectively, together with the necessity for submission of this reply brief to the printer in order that it may be filed with the Court by Monday morning, March 27, necessitates a very brief review of the remaining divisions of appellees' briefs.

339 U.S. 142, by asserting that two changes were made in the Harrington Amendment rather than the one (time limit) specified by the Court in its decision in *RLEA v. U.S.*, *supra*. The first change, according to the Government, was one of substance—the substitution of the words “in a worse position with respect to their employment” for the words “if such transaction will result in unemployment or displacement of employees.” (G. 46.)⁹ The second change was the time placed upon the operation of the Harrington Amendment and it is this latter change, according to the Government, to which this Court referred in the *RLEA* case. This argument, of course, ignores the fact that the language change in the Harrington Amendment did not change the substance of that Amendment. The fact that the Court referred to the language change as “not now material” (339 U.S. at 152; G. 47) is consistent with the narrow issue in the *RLEA* case for there the Court was not concerned with the *type* of protection required during the first four years but only with the protection intended to be afforded subsequent to the expiration of the four-year period.

With regard to this Court's decision in *Order of Railroad Telegraphers v. Chicago & North Western R. Co.*, 362 U.S. 330, the Government dismisses this Court's reference to Section 5(2)(f) in that case by stating that in quoting only the second sentence of Section 5(2)(f) this Court was really referring to the

⁹ As pointed out in the preceding section, this change did not affect “the purposes intended to be accomplished by the [original language of the] Harrington Amendment.”

authority granted by the *third* sentence of this provision (G. 48-49).¹⁰

V

Claim of Contemporaneous and Consistent Construction of Section 5(2)(f)

A careful reading of the magazine excerpts and the comments of two attorneys referred to by appellees (G. 51-54; EL. 39-40), demonstrates that only one and perhaps two of them support the position of appellees and one of those refers to the protection provided as "dismissal wage" protection. (G. 52.) Such a characterization was explicitly branded as erroneous by Mr. Harrington himself and Brotherhood of Railroad Trainmen President Whitney in his letter to Mr. Lea (A. 55). The statement which is attributed to two attorneys for the Brotherhood of Locomotive Firemen and Enginemen which spoke of the "legal right to be compensated in large measure for the losses resulting from consolidation" (G. 52) is too general to offer any support for the Government's contention.

In any event, all statements quoted by the Government are statements of advocates of the protection afforded by the first sentence of Section 5(2)(f) and they quite understandably desired to inform their members of the considerable victory which they had achieved.

Several cases are cited and briefs of RLEA counsel are referred to and quoted at length (G. 54-61). None

¹⁰ The Government relies upon the dissenting opinion in the *ORT* case which states that "nothing in [Section 5(2)(f)] authorizes the Commission to freeze jobs" but at the same time points out that the Commission did in fact freeze jobs in at least one case. (G. 67n; G. 3a.)

of the situations referred to is applicable here. *Fort Worth & D. C. Ry. Co. Lease*, 247 ICC 119 (1941), involved a transaction which arose long prior to the development of any specific type of protection under Section 5(2)(f). The case, in fact, was quite similar to the situation which confronted this Court in *RLEA v. U.S.*, *supra*. In the *Fort Worth* case the major changes involved were to occur *after* the four-year period had expired. The railroad took the position, later taken by the ICC in *RLEA v. U.S.*, *supra*, that protection under Section 5(2)(f) was limited to a maximum of four years and that the railroad need only keep all employees on during that time and thereafter would owe them nothing under the statute.

The RLEA argued that anyone affected after the four years had expired should get at least compensation protection. It also argued that the few employees who might be affected during the four-year period should get like protection. Such a position was required and justified because the RLEA, at that early date, was faced with a possible decision which might have effectively deprived the vast majority of employees of all protection.

In any event, the ICC denied the application and thereby made no construction of the statute.¹¹

The decision in *Baltimore & Ohio Railroad Company Operation*, 261 ICC 615 (1946), relied upon by the Government (G. 60-62), involved the protection of employees who though adversely affected themselves

¹¹ The dissent of Chairman Eastman (G. 58-59) is interesting in that it implies that the majority of the ICC might have tended to a conclusion that employment protection was indeed required but was limited to a maximum rather than a minimum of four years.

were not employees of a *carrier* affected and therefore the Commission would not protect them.

The quotation from the oral argument in that case (G. 61) revolved around the issue of whether the Commission should fix seniority rights in cases coming before it. It was obvious to the Commission that it should not become involved in such matters and the attorney for the employees agreed with this conclusion and then indicated that the employees would be willing to accept compensation protection.

The Government's review of the development of protective conditions by the Commission (G. 63-66) merely emphasizes what has heretofore been stated by appellants, that the conditions imposed were suggested by representatives of employees as the type of protection which they thought suitable to the transactions then before the Commission the type of protection which nearly all of them had fought for in Congress and which they had become accustomed to under the Washington Agreement.

The review of all Commission decisions under Section 5(2)(f) as submitted by the appellees clearly demonstrates that while the Commission has followed a particular practice with regard to the type of conditions it has imposed it has expressed no positive construction of this statute regarding its mandate to impose employment protection. The most that can be said regarding the Commission's "construction" of this mandate is that the Commission has acted negatively in this matter for twenty years. It has perhaps "considered" Section 5(2)(f) as not providing employment protection but had never so held. In this regard it falls within the rule recently announced by

this Court in *Baltimore & Ohio Railway Company v. Jackson*, 353 U. S. 325 at 330-331. (1957):

"It is contended that, since the Commission has for over 60 years considered maintenance-of-way vehicles not subject to the Acts, this consistent administrative interpretation is persuasive evidence that the Congress never intended to include them within its coverage. It is true that long administrative practice is entitled to weight, *Davis v. Manry*, 266 US 401, 405, 45 S Ct 163, 69 L ed 350, 352 (1925), but there has been no expressed administrative determination of the problem. We believe petitioner overspeaks in elevating negative action to positive administrative decision. In our view the failure of the Commission to act is not a binding administrative interpretation that Congress did not intend these cars to come within the purview of the Acts. See *Shields v. Atlantic Coast Line R. Co.* 350 US 318, 321, 322, 76 S Ct 386, 100 L ed 364, 367, 368 (1956)."

VI.

Inadequacy of "New Orleans Conditions"

The appellees take the position that the evidence submitted by Mr. Crotty injected a new factual element into the case which was not presented to the Commission and therefore should not be considered by this Court (G. 67; EL 53). The appellants, however, submitted that testimony of Mr. Crotty in support of the temporary restraining order which they sought from the District Court and which they believe to be a necessary basis for the permanent injunction which they here seek (A. 85). The testimony was offered in amplification of evidence of employee adverse effect submitted to the Commission by the railroad (A. 85). The Commission, after applying the "New Orleans conditions" for 10 years hardly can be heard to say at

this time that it was not cognizant of the effects of the application of those conditions. The testimony of Mr. Crotty merely details for the Court those effects.

The reference to the "New Orleans conditions" as "providing partial financial compensation" does not constitute the injection of a new factual issue as claimed by the appellees (G. 67; EL. 53) since the railroad and the Commission both have had long experience with the application of these conditions and must recognize that they do not provide full financial compensation to employees whose position with respect to their employment is worsened as a result of the merger. (Cf. A. 20-24.)

It is suggested by the Government that imposition of employment protection conditions would "impede the effective consummation of mergers" (G. 70). No doubt the full benefits of a merger may be partially and temporarily postponed as the result of the imposition of such conditions, but that is a recognized effect of the imposition of any type of protective conditions and has never been considered a justifiable reason for refusing to impose conditions (A. 25). In addition, the recent merger of the Norfolk & Western Railway Company and the Virginian Railway Company certainly was not "impeded" by employment protection, for prior to that merger, those railroads executed a voluntary agreement with the representatives of their employees which provided for those employees almost the precise type of protection appellants seek here. Further, that agreement contains no time limit on the employment protection which it provides.

Though the Erie-Lackawanna claims that the "New Orleans conditions" are adequate, it offers certain

"undertakings" with regard to the protection of its employees in this case (EL. 53-57). Such "undertakings" are not only totally irrelevant to the issue presented to this Court and are, in fact, meaningless to the railroad employment force as a whole but also point up the fact that the "New Orleans conditions" do not provide even complete financial protection and do not meet the requirements of Section 5(2)(f) as recognized by the Government (G. 11).¹²

CONCLUSION

Although it has not been possible to present fully the errors contained in the briefs of appellees, the appellants respectfully submit that the foregoing is sufficient to demonstrate that the judgment and order of the District Court is erroneous and should be reversed with directions to set aside as contrary to law that part of the Commission's report and order of September 13, 1960, which holds that it is not required by statute to protect the employment position of all employees involved; to direct the Commission to take such action as will provide employment protection consistent with the requirements of Section 5(2)(f), and to issue a permanent injunction based upon the temporary restraining order now in effect which will remain effective until such time as the Commission

¹² In the course of the railroad's presentation of its "undertakings" it makes the statement that the "New Orleans conditions" "do not cause loss of seniority rights or 'bumping'." (EL. 54.) This statement is true as far as it goes but the "New Orleans conditions" require "bumping" to take place before they become operative (A. 22).

has complied with those requirements of Section 5(2)(f).

Respectfully submitted,

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